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SUBJECT: PRESIDENT OF THE INTERNATIONAL HUMANITARIAN FACT
FINDING COMMISSION ASKS THE U.S. TO SUPPORT ITS QUEST FOR
OBSERVER STATUS IN THE UNGA

11. This is an action cable. See paragraph 6.

12. USUN Legal Advisers met with Professor Michael Bothe, President of the International Humanitarian Fact-Finding Commission (IHFFC) on May 19. Bothe requested support from the United States on the issue of granting observer status in the UN General Assembly to the IHFFC. Professor Akira Mayama (IHFFC) and Swiss Mission to the UN Legal Adviser Emmanuel Bichet also attended. Bothe explained that the legal basis for the IHFFC's existence is Article 90 of the First Protocol additional to the Geneva Conventions. The IHFFC is a fact-finding body designed to ensure the respect for, and faithful implementation of international humanitarian law. It is an impartial, non-adjudicating body which has no political agenda of its own. The IHFFC is poised to assist the parties to a conflict to address a situation where international humanitarian law may have been violated, and thus to help promote the rule of law in international relations and create conditions conducive to peace.

13. Bothe said that when the Protocol was adopted in 1977, a number of safeguards for State sovereignty were built into the text, in particular that only a State having agreed by declaration to recognize the competence of the Commission can unilaterally request an inquiry, and only against another State having made the same declaration. So far, 71 States have made that declaration, Estonia being the most recent. No such case has been referred to the IHFFC since it was constituted. Bothe said that the IHFFC could use its good offices in situations not involving states that have made declarations, including situations involving non-Parties to Protocol I.

14. Bothe said that the IHFFC is currently "sidelined" on most major issues where it could be of some use and is seeking observer status in the UN General Assembly in order to have a presence where the political action is. Understanding the criteria that the IHFFC would have to meet as whether it is active in a field of interest to the GA and whether it is an intergovernmental institution, Bothe said that absolutely the first criteria is met. To support the argument that the IHFFC is an intergovernmental institution, Bothe said that it is financed by states has a secretariat run by a state (Switzerland), its existence is based on an international treaty established by states and its mandate is governed by the consent of the parties.

15. In his effort to obtain observer status for the IHFFC, Bothe said that he had met with a variety of states in New York. He said that China, although it had some concerns, would not oppose the initiative and that all the others seemed amenable. Bichet shared that next steps will involve a June request from the Swiss Mission to the UN to the Secretariat to add this issue to the agenda of the 64th session of the UN General Assembly. Bothe said that he would appreciate the support of the United States on this matter.

16. Action requested: please advise whether USUN can inform the IHFFC and the Swiss mission that we will not object to

UNGA observer status for the IHFFC. We would like to be in a position to convey our views to IHFFC and the Swiss before the Swiss propose a resolution in June.

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